



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Minnie May Riordan

2 IBIA 98 (11/16/1973)

Also published at 80 Interior Decisions 728



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF MINNIE MAY RIORDAN  
(CITIZEN POTAWATOMI, UNALLOTTED)

IBIA 73-15

Decided November 16, 1973

Appeal from an Administrative Law Judge's decision denying petition to rehear.

Affirmed.

Indian Probate: Inheriting: Generally

State statutes of descent and distribution as construed and interpreted by the highest court of the state involved will be considered by the Department as controlling in trust heirship proceedings.

APPEARANCES: Law Firm of Buck, Crabtree, Groves and Ransdell by Eric J. Groves for appellants, Maybelle DeWitt Dixon, Bobby Eugene DeWitt, J. B. DeWitt, Mary Kathryn DeWitt Benton and Doyle E. DeWitt, Jr.

OPINION BY MR. WILSON

This matter comes before the Board on appeal from an Administrative Law Judge's decision denying petition for rehearing of Maybelle DeWitt Dixon, Bobby Eugene DeWitt, J. B. DeWitt, Mary Kathryn DeWitt Benton and Boyle E. DeWitt, Jr., identified hereinafter as appellants.

Minnie May Riordan, identified hereinafter as decedent, died intestate December 17, 1971.

A hearing was held to determine the decedent's heirs by Administrative Law Judge, John F. Curran, on November 9, 1972. Thereafter, on November 22, 1972 an order determining heirs was duly made and entered by the Judge wherein certain nieces and nephews were found to be her legal heirs to the exclusion of the grandnieces and grandnephews of the decedent, the appellants herein.

The appellants, through counsel, filed a Petition for Rehearing from the Order of November 22, 1972, supra. The Judge denied the Petition and affirmed his Order of November 22, 1972.

From the said denial appellants, through counsel, filed a notice of appeal alleging, inter alia, as basis for their appeal the following errors of law and fact:

- (1) That petitioners, all grandnieces and grandnephews of the Decedent, should be entitled to take by right of representing their predeceased parents.
- (2) That the estate in question is an "ancestral estate" and that such fact further qualifies the petitioners to take by right of representation.
- (3) That in order for a more uniform and just result in the distribution of this estate, the Petitioners urge a strict interpretation of the statutes of succession.

The foregoing contentions, it is noted, were previously raised by the appellants and were duly considered and rejected in the Judge's order of January 26, 1973 from which the appeal herein was taken.

Having reviewed the record and considered the briefs of the appellants, the Board finds that the appellants have shown no valid or compelling reasons why the Administrative Law Judge's findings of fact, conclusions of law, and his decision of November 22, 1972 should not be sustained and affirmed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals, by the Secretary of the Interior, 43 CFR 4.1, the Administrative Law Judge's decision of November 22, 1972, copy whereof is attached, IS HEREBY AFFIRMED.

This decision is final for the Department.

//original signed  
Alexander H. Wilson, Member

I concur:

//original signed  
Mitchell J. Sabagh, Member



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
HEARINGS DIVISION

INDIAN PROBATE  
NO. IP TU 95P 72

ESTATE OF Minnie May Riordan, )  
Deceased, Citizen Potawatomi Unallottee ) ORDER DETERMINING HEIRS  
)  
)

This is a proceeding to determine the heirs and to settle the estate of Minnie May Riordan a deceased Indian, No. Unallottee of the Citizen Potawatomi Indian Tribe.

Upon receipt of the notice of death, a hearing was duly concluded at Shawnee, Oklahoma, on November 9 1972.

FINDINGS AND CONCLUSIONS based upon the evidence adduced are as follows:

The said Minnie May Riordan whose last residence was in the State of Oklahoma was born 2-10-95 and died intestate at Norman, Oklahoma on 12-17-71 :

At the date of death the decedent was possessed of that trust or restricted property, real and personal, located on the Citizen Potawatomi Indian Reservation(s) listed on the inventory/(ies) attached, and other reporting documents; and

At death the decedent was survived by certain persons whose respective names, relationships, birth dates, and interests in the estate under the statutes of descent of the State(s) of Oklahoma are as follows:

Ruby M. DeWitt Fox, Citizen Potawatomi Unal.,	niece,	1/4
LeRoy DeWitt, Citizen Potawatomi Unal.,	nephew,	1/4
Juanita DeWitt Nash, Citizen Potawatomi Unal.,	niece,	1/4
Charles DeWitt, Citizen Potawatomi Unal.,	nephew,	1/4

A question was raised as to whether the grand nieces and grand nephews, being the children of deceased nephews, were heirs at law of the decedent and entitled to share in the estate. Subsection 6 of Section 213, Title 84, Oklahoma Statutes, 1961, provides that where the decedent leaves no issue, nor husband, nor wife, and no father or mother, or brother or sister, the estate must go to her next of kin. In this case the "next of kin" are the nephews and nieces and not the grand nephews and grand nieces. In the case of Appeal of Hall, 102 A 977, 117 Me 100, the court held in a similar case that the grand nephews and grand nieces were not "next of kin" and not heirs at law. The Maine statute on descent and distribution was the same as the

Oklahoma statute. The Supreme Court of California in the case of In Re Nigro's Estate, 156 P 1019, likewise held that grand nephews and grand nieces were not "next of kin".

Vol. 4 Page On Wills, Section 34.13 states the rule that "\*\*\*\*the words 'next of kin' mean the nearest blood relations, and not all those who would take under the statute of distributions.\*\*\*\*\*" "'Next of kin' means a brother in preference to nephews, sons of a deceased brother; and nieces in preference of grandnieces."

The attorneys for the grand nephews and grand nieces submitted an excellent brief in arguing that their clients are entitled share in this estate. However, I believe that this case is controlled by the case of In Re Humphrey's Estate, 141 P2nd 993 (Okla 1943). In that case the question was whether the "next of kin" were two uncles or whether the "next of kin" were the two uncles and children of deceased uncles. The Supreme Court of Oklahoma held that the two uncles were the "next of kin" and that the children of deceased uncles were not included as "next of kin". Applying that rule here, the nephews and nieces would take as against the children of deceased nephews or nieces.

We; therefore, hold that the grand nephews and grand nieces are not entitled to share in this estate.

(Findings and Conclusions, continued)

The Superintendent or other officer in charge is to collect a probate fee of \$75.00 pursuant to the Act of January 24, 1923, 25 U.S.C. 372 (1970), assessed on the estimated value of \$ 88,644.76 of the land and personal property subject to the jurisdiction of this Department.

**ORDER**

**NOW, THEREFORE**, by virtue of the power and authority vested in the Secretary of the Interior under section 1 of the Act of June 25, 1910, as amended, 25 U.S.C. 372 (1970) and other applicable statutes, as delegated (211 DM 13.7; 35 F.R. 12081), **IT IS HEREBY ORDERED**, that the Superintendent or other officer in charge distribute the estate to the decedent's heirs named in the findings and conclusions herein. The distribution of interests remaining in trust or in restricted status is to be made subject to the burden of payment of the probate fee and to the payment of allowed claims. Those rights of (homestead) (dower) (curtesy) included in the findings and conclusions are recognized, and the interests to be distributed shall be and are subject to the burden thereof.

This decision is final for the Department unless a petition for rehearing is timely filed in accordance with 43 CFR §4.241 within 60 days from the date hereof as set forth in the notice attached hereto.

Done at Tulsa, Oklahoma , on November 22, 1972 .

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//original signed  
John F. Curran  
Administrative Law Judge